

DECLARATION

OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR TOMLINSON WOODS
LOTS 1 THROUGH 91

THIS DECLARATION, made on the date hereinafter set forth by THE WOODS JOINT VENTURE, a Nebraska Joint Venture, composed of Equity Services, Inc., a Iowa corporation, and Creative Real Estate, Inc., a Nebraska corporation, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property:

Lots 1 through 91, inclusive, in Tomlinson Woods, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, and

WHEREAS, the Declarant desires to create on the herein above described real property a residential community with private streets, improvements, permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said private streets, improvements, parks, playgrounds, open spaces, and other common facilities; and to this end, desires to subject The Properties to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated the Tomlinson Woods Homeowners Association, under the laws of the State of Nebraska as a non-profit corporation, the purpose of which shall be to exercise the functions aforesaid;

WHEREAS, Declarant will convey the said Lots, subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the

purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of Tomlinson Woods Homeowners Association, a Nebraska non-profit corporation, its successors and assigns.

Section 2. "Association" shall mean and refer to the Tomlinson Woods Homeowners Association, a Nebraska non-profit Association, its successors, and assigns.

Section 3. "Common Properties" shall mean and refer to those areas of land listed on Exhibit "A" attached hereto and by this reference incorporated herein, and any additional areas of land declared to be Common Properties in any Supplemental Declaration filed by Declarant pursuant to Article II of the Declaration. All Common Properties shall be devoted to the exclusive common use and enjoyment of the Owners of The Properties.

Section 4. "Declarant" shall mean and refer to The Woods Joint Venture, its successors and assigns.

Section 5. "Living Unit" shall mean and refer to any building situated upon The Properties designated and intended for the use and occupancy as a residence by a single family.

Section 6. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon any recorded map or plat of The Properties, upon which a Living Unit shall be built, or is proposed to be built, with the exception of the "Common Properties", as heretofore defined. The Lots subject to this Declaration are shown and described on Exhibit "B" attached hereto and by this reference incorporated herein. Any Supplemental Declaration hereinafter filed shall similarly reflect those Lots thereunder subject to this Declaration, or otherwise legally describe the real property to become subject to the Declaration.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or

any part, parcel or portion of a platted Lot which is a part of The Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "The Properties" shall mean and refer to all such properties as are subject to the Declaration or any Supplemental Declaration under the provisions of Article II hereof, which shall initially consist of Lots 1 through 91 inclusive, in Tomlinson Woods, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 10. "Supplemental Declaration" shall mean and refer to any written instrument filed under the provision of Article II hereof which shall subject additional real estate to this Declaration.

Section 11. "Tree" shall mean and refer to any specie of tree larger than one (1) inch diameter at breast height.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

The Properties shall be held, transferred, sold, conveyed and occupied subject hereto. The Association shall have the right at any time subsequent to the filing of this Declaration, to add, annex and subject additional contiguous land in Douglas County, Nebraska, to this Declaration by filing in the Office of the Register of Deeds of Douglas County, a written instrument duly executed and acknowledged by the Association, to the effect that such additional land is being subjected hereto. The annexation of additional land to be subject hereto shall require written instruments signed by two thirds (2/3) of the membership in the Association. Any real property thereby subjected to this Declaration shall, after said filing, be subject hereto and the owners thereof shall be subject to all the same duties, liabilities and rights hereunder as though said additional property had been originally a part of the real estate described in Article I hereof on the date of the filing of this Declaration.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Owner's Easements of Enjoyment. Every Owner and/or Member of the Association, shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and rights to the use of the Common Properties by an Owner for any period during which any assessment against

his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) the right of the Association to dedicate or transfer all or any part of the Common Properties, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, non-profit corporation (to use for purposes similar to those for which the Association was formed), authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or Members of the Association and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days or more than 60 days in advance. Declarant, or its assigns, shall have the right at any time to use so much of the Common Properties as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the Owners use and reasonable access to the Common Properties, nor with their right of ingress or egress to their homes.

(c) the right of the Association to limit the number of guests of Owners on recreational facilities.

(d) the right of the Association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties and facilities, which mortgage shall be subordinate to the rights of the owners hereunder.

(e) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties by Members and by guests of Members.

(f) the right of the Association, through its Board of Directors, to pass and amend, from time to time, rules and

regulations governing the use of certain parts or all of the Common Properties for the welfare and common good of all Owners within The Properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Properties and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests or contract purchasers who reside on the property.

Section 3. Title to the Common Properties. The Declarant will convey a fee simple title to the Common Properties described in Exhibit "A", attached hereto and incorporated herein by reference, to the Association, free and clear of all encumbrances and liens, except easements, restrictions, covenants, and conditions then of record. The Common Properties may be conveyed by the Declarant to the Association prior to the sale of the Seventy-fifth (75) Lot by Declarant, and shall be conveyed by Declarant to the Association no later than the sale of the Seventy-fifth (75) Lot by Declarant.

ARTICLE IV

MEMBERSHIP

Declarant, and every Owner as defined in Article I, Section 8, under this Declaration shall be a member of the Association. No Owner shall have more memberships than the number of Lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be the sole qualification for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

ARTICLE V

VOTING RIGHTS

Members (Owners) shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within The Properties, subject to Section 7 of this Article, and each Owner of any Lot, except those exempt under

Section 9 of this Article, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenant, and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title to the Lot subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of The Properties and, in particular, annual assessments shall be used for: the maintenance and repair of the Common Properties; the maintenance and repair of the Roadway Easements, as defined in Article X, Section 2. herein; snow removal; care and maintenance of private streets over which the Association has an easement; care and maintenance of parks, playgrounds, open spaces and other common facilities; the care and maintenance of the "private improvements," as set forth and defined in a certain Subdivision Agreement between the City of Omaha, the Declarant, and the Association; providing insurance coverages upon the Common Properties as herein set forth; and providing for the recreation needs of the residents of The Properties. Annual assessments, and annual assessment reserves, are not intended to be for maintenance, repair or replacement of the Living Units or appurtenant structures or improvements, nor for the construction, replacement or major repair of capital improvements upon the Common Properties.

Section 3. Annual Assessment. Until January 1, 1980, the maximum annual assessment shall be Three Hundred and no/100 (\$300.00) Dollars per Lot, payable monthly in 12 equal monthly installments of \$25.00, subject to adjustment as hereinafter set forth:

- (a) From and after January 1, 1980, the annual assessment may be increased each year not more than ten percent above the assessment for the

previous year without a vote of the membership.

(b) From and after January 1, 1980, the annual assessment may be increased above ten percent of the annual assessment for the previous year by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors must fix the annual assessment.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties, or within the Roadway Easements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be delivered either personally or by mail to all members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all of the votes. No such subsequent meeting shall be held more than 60 days following the preceeding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Properties, EXCEPT THAT SUCH ASSESSMENTS SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE

DECLARANT UNTIL DECEMBER 31, 1980. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The Board of Directors shall adopt a budget for each calendar year, which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar (fiscal) year and provide funds for reserves as herein set forth. The budget shall be adopted in November of each year for the coming calendar year and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each Owner on or before December 31, preceding the year for which the budget is made. Budgets may be amended during a current year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each Owner as promptly as possible. The foregoing requirement of preparation of a budget and the sending of same to Owner shall not apply to any budgeting for any period prior to January 1, 1980.

The Board of Directors shall fix the amount of annual assessment to be assessed against each Lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the Board to so notify each Owner in advance shall not, however, relieve any Owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion to require that all Owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be and become a lien as of the date of the annual assessment.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest

thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid within thirty days (30) after the due day shall bear interest from the due date at the rate of nine percent (9%) per annum. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said ~~annual~~ assessment immediately due and payable, at its option. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot. The Mortgagee of the subject property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

Section 9. Exempt Property. Other than Lots exempt under the provisions of Section 7 of this Article, all Lots shall be subject to a uniform rate, except for Lots owned by or conveyed to, and accepted by, any political subdivision of the Federal, State or any local governments, and Lots owned by or conveyed to, and accepted by, the Association. Such Lots shall be exempt from assessment from and after the date of filing of any such conveyance with the Register of Deeds of Douglas County, Nebraska, and until the Lot is thereafter conveyed to a party or an entity not qualifying for exemption under this Section. Such Lots shall also be exempt from special assessments.

Section 10. Subordination of the Lien to Mortgages. The lien of

the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due, or from the lien thereof.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Board of Directors of the Association shall appoint three (3) or more persons to serve as an Architectural Control Committee (the "Committee"). The Board as a whole or one or more members thereof may serve as members of the Committee. Such appointees shall serve until resignation or dismissal by the Board. Vacancies need not be filled unless the Committee has less than three (3) members remaining, in which event, a replacement shall be named at the earliest opportunity by the Board.

Section 2. Review of Committee.

(a) Structures. No structures, whether residences, accessory buildings, tennis courts, swimming pools, antennae (on a structure or on a Lot), flag poles, fences, walls, driveways, patio, patio enclosure, house numbers, or any other such improvements, shall be constructed or maintained upon any Lot, nor shall any grading or excavation be commenced unless complete plans, specifications, and lot plans therefore, showing the exterior design, height, building material and color scheme thereof, the location of the structure platted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Architectural Control Committee, and a copy of such plans, specifications, and lot plans as finally approved, deposited with the Architectural Control Committee. The Committee shall have such other powers and duties as set forth in this Declaration, the By-Laws of the Association and as delegated by the Board of Directors.

(b) Structure Procedures. After submission of such plans and requests, the Architectural Control Committee shall make due consideration thereof and shall approve or disapprove all plans and requests in writing within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after requests have

been submitted approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the Committee members is required for approval of proposed improvements.

(c) Tree Removal. Every Owner, immediately upon receiving fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the Properties, shall secure a performance or cash bond in the amount of \$5,000.00, running to the Association, the purpose of said bond being to insure Owner's performance of the provisions of this Declaration regarding the removal of trees from said Owner's Lot. Evidence of said bond must be filed with the Architectural Control Committee by Owner immediately upon receiving fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the Properties. Owner must maintain and keep in existence said bond for a period of no less than two years after Owner has received fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the Properties. Subsequent Owners must secure said performance or cash bond in the amount of \$5,000.00 and shall keep said bond in existence until two years from the date the Declarant first conveyed fee simple title, or until two years from the completion of a Living Unit on said Lot, whichever is later.

No tree upon the Lot of an Owner may be moved, removed, cut or destroyed unless complete plans showing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, shall have been submitted to and approved in writing by the Architectural Control Committee.

(d) Tree Removal Procedures. After submission of such tree removal plans and requests, the Architectural Control Committee shall make due consideration thereof and shall approve or disapprove all plans and requests in writing within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after tree removal requests have been submitted, said submitted plans shall be deemed disapproved. A majority vote of the Committee members is required for approval of proposed tree removal plans.

(e) Bond Forfeiture. In the event an Owner of a Lot, his agents or assigns shall move, remove, cut or destroy any tree on said Owner's Lot without first obtaining written Architectural Control Committee approval for said tree removal, Owner shall forfeit in total to the Association the \$5,000.00 bond Owner has posted pursuant to Article VII, Section 2.(c) above.

Section 3. Guidelines and Restrictions. All exterior painting will be of an earthy color and any repainting or changing of color or repainting of

any Living Unit shall be consistent with the approved original plans and specifications for the Living Unit and shall have the prior affirmative consent of the Architectural Control Committee. All Living Units shall have wood shingles. All fences are to be left natural wood color or painted to blend in with the house exterior. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within The Properties conform to and harmonize with existing surroundings and structures.

Section 4. Records. The Committee shall maintain written records of all applications submitted to it, the dates submitted, and of all action it takes in reference thereto and the dates such action is taken.

Section 5. Liability. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within The Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

ARTICLE VIII

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon Lot and Common Properties for the benefit of each other Lot and Common Properties, and may be enforced by any Owner of a Lot, or of the Common Properties, or the Association.

(a) No Lot shall be used except for residential purposes.

(b) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

(c) No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be erected upon, or used, on any Lot any time as a residence, either temporarily or permanently.

(d) Dwellings shall not be moved from outside of Tomlinson Woods to any Lot within this addition.

(e) No unused building material, junk or rubbish shall be left exposed on any Lot except

during actual building operations. No repair of automobiles will be permitted outside of garages on any Lot at any time.

(f) No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading or excavating equipment or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or in any manner left exposed on any Lot at any time.

(g) Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time, however, family gardens are permitted.

(h) No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the Living Unit and not exposed to view from the outside of the Living Unit. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any Living Unit unless completely screened from view from every street and from all other Lots in the addition. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Living Unit except when in actual use unless completely screened from view from every street and from all other Lots in the addition. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothes line shall be permitted outside of any Living Unit at any time except one umbrella-type clothes line per Lot. Any exterior airconditioning condenser unit shall be placed in the rear or side yard.

(i) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, ex-

cept that dogs, cats, or other household pets maintained within the Living Unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further that the total number of dogs and cats kept within the Living Unit or on the Lot shall not exceed two. It is intended specifically to prohibit horses, ponies or other animals sheltered outside the Living Unit except for the single dog house permitted in Article VIII (j).

(j) No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot except that a dog house shall be permitted provided the construction plans and specifications and the location of the proposed structure have been first approved in writing by the Architectural Control Committee using the provision set forth in this Article VII.

(k) No sign, billboard or other structure for advertising or the display of advertising material or any kind shall be erected, altered, placed or permitted to remain on any Lot except that real estate for-sale or for-rent signs of a size no greater than 4.5 square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale or rent.

(l) Exposed portions of the foundation on the front of each Living Unit are to be covered with either siding or brick and exposed portions of the foundation on the sides and rear of each Living Unit shall be either covered with brick or siding or shall be painted.

(m) A Living Unit shall have wood shingles.

(n) All Living Units shall have indoor garage space for a minimum of two automobiles, and shall

have driveway space for a minimum of two automobiles.

(o) All fences shall be wood, and fences erected in the front yard of a Living Unit shall be no greater than two feet in height.

(p) A Living Unit on which construction has begun must be completed within one (1) year from the date the foundation was dug for said Living Unit.

(q) No use shall be made of the Common Properties which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Properties.

(r) No Owner, other than the Declarant, successors and assigns, shall place any structure whatsoever upon the Common Properties, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Properties to all members.

(s) The use of the Common Properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

ARTICLE IX

INSURANCE

Insurance shall be obtained and maintained and the proceeds thereof disposed of by the Association as follows:

Section 1. Coverage. The Association shall obtain and maintain in effect for the improvements upon the Common Properties, on or more policies of insurance against the perils of fire, lightning, malicious mischief and vandalism with extended coverage in amounts equivalent to the full replacement costs of any damage or destruction caused by any such peril, without deduction for depreciation. Such coverage shall include "contents coverage". The Association shall obtain and maintain in effect public liability insurance in such limits as determined by the Board of Directors, but in no event less than \$500,000/\$1,000,000/\$100,000 covering the Common Properties with the Association, Board, its employees and agents as insureds. The Association shall also obtain and

maintain workmen's compensation coverage and such other coverage as determined by the Board.

Section 2. Valuation and Coverage Amount. Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a casualty company or otherwise of the full replacement of the improvements on the Common Properties, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effected pursuant to this Article.

Section 3. Liability of Board. The Board of Directors shall not be liable to any party upon the amount of insurance coverage obtained in settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

ARTICLE X

EASEMENTS

The Properties are, and shall perpetually be, unless any thereof is terminated, subject to all and each of the following easements for common use, construction, maintenance, support, repair, recreational and other access, private and public sewer and utility line construction and services and roadway easements.

Section 1. Utility Easement. Declarant hereby grants to itself and to each of the Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, a perpetual easement, together with rights of egress, ingress, and other access thereto, for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, or other utility conduits, lines, or other facilities in and under the Common Properties, and each Lot, as confined to noninterference with any driveway, sidewalk or structural element of any approved or permitted Living Unit on any Lot. While the utility easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the buildable area of each Lot. The grantees of the above described easement further agree that subsequent to the construction of their respective improvements on the Properties, they shall reduce said blanket utility easement to a specific metes and bounds easement

setting forth the actual amount of The Properties used for said improvements, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket utility easement to a specific metes and bounds utility easement. Each such Grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil excavated for any purposes hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas or driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so. The easement as to any of the Common Properties shall be determined and granted by the Association in the manner set forth in the By-Laws, as from time to time amended.

Section 2. Roadway Easement. Declarant hereby reserves and grants to itself, and to the Association, their successors and assigns, a perpetual easement, together with rights of egress, ingress, and other access thereto, for the purposes of constructing, maintaining, repairing and reconstructing roadways over, under, and upon the Common Properties, and each Lot, as confined to noninterference with any structural elements of any approved or permitted Living Unit upon the Properties. While the roadway easement granted herein is a blanket easement, the easement shall not, nor is it intended to, interfere with the orderly development of each Lot, and the grantees of the above described easement agree to use only so much of the easement as is necessary for their purposes in order to maximize the buildable area of each Lot. Provided, however that subsequent to the initial construction of the roadways on the Properties, the Association and the Declarant hereby agree to reduce said blanket roadway easement to a specific metes and bounds easement setting forth the actual amount of the Properties used for said roadways, and all Owners hereby covenant and agree to cooperate with the reduction of the blanket roadway easement to a specific metes and bounds roadway easement. Declarant hereby reserves and grants for itself and each of the Association, each Owner, contract purchaser and lessee (while in possession of any Living Unit in The Properties) their families, guests, employees, agents and invitees, an easement for access, ingress, egress, use and enjoyment upon and over each such roadway as traffic to and from each Lot and the Common Properties.

Section 3. All telephone and electric power service lines from property line to dwellings shall be underground.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

Section 2. Amendments. The covenants and restrictions of this Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion, until such time as the Declarant has conveyed fee simple title to Sixty-seven (67) of the Lots. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds ($2/3$) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Notices. Any notice required to be sent to any Member, Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing; Provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Association, in writing of its interest in a Lot prior to the responsibility arising in the Association to notify said contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association

or any owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 15 day of January, 1978.

THE WOODS JOINT VENTURE,
a Nebraska joint venture,

By: CREATIVE REAL ESTATE, INC.,
a Nebraska corporation,

By: 

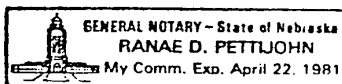
President

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss

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On this 15 day of January, 1978, before me, a Notary Public duly commissioned and qualified in and for said County, personally came Gene D. Svensen, President of Creative Real Estate, Inc., to me personally known to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Witness my hand and notarial seal the day and year last above written.



Ranae D. Pettijohn
Notary Public

EXHIBIT "A"

Lot 91, Tomlinson Woods, an addition to the City
of Omaha, as surveyed, platted and recorded in
Douglas County, Nebraska.

EXHIBIT "B"

Lots 1 through 90, inclusive, Tomlinson Woods,
an addition to the City of Omaha, as surveyed,
platted and recorded in Douglas County, Nebraska.

3 April.
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